

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

BRIAN B.,

Claimant,

v.

REDWOOD COAST REGIONAL
CENTER,

Service Agency.

OAH No. N 2006110239

DECISION

Administrative Law Judge Steven C. Owyang, State of California, Office of Administrative Hearings, heard this matter in Ukiah, California, on April 5 and 9, 2007.

Claimant Brian B. was present and represented by attorney Steven Shaw.

Attorney Nancy Ryan represented the service agency, Redwood Coast Regional Center (RCRC).

Post-hearing briefs were filed and the matter was submitted on June 4, 2007.

ISSUE

Did RCRC conduct a comprehensive reassessment of claimant Brian B.'s eligibility for regional center services before concluding that its original determination of eligibility was clearly erroneous?

FACTUAL FINDINGS

1. In 2002, RCRC determined that claimant Brian B. was eligible for regional center services. In October 2006, RCRC reassessed claimant's eligibility and concluded that its prior determination of eligibility was clearly erroneous. In an October 18, 2006 notice of proposed action, RCRC informed claimant that it had determined him "to be not developmentally disabled, and therefore, not eligible for Regional Center services." Claimant appealed and this hearing followed.

2. Claimant Brian B. is approximately 40 years old. He was an RCRC (then known as the North Coast Regional Center) consumer when he was a minor, but RCRC lost or inadvertently destroyed claimant's records from that time. He again became an RCRC consumer in 2002.

3. Respondent graduated from Ukiah High School in 1985. He received a Bachelor of Science degree from the California State University, Long Beach (CSULB), in 1998, where he was a double major in Business Administration: Management and Business Administration: Operations Management.

4. From the mid-1980's through the late 1990's, claimant was employed as a: data entry clerk; manager's assistant in a brewery's souvenir department; sales associate for Montgomery Ward, The Broadway, and Bullocks; and, temporary office worker. Several of these were part-time jobs.

5. Claimant would like to start a computer software business. He wants to retain eligibility for RCRC services and seeks RCRC assistance for his business. Among the services he has sought from RCRC are: assistance in writing a business plan; a business advisor or C.P.A.; an executive team; help with writing ads and reading resumes. Beyond help with his business, claimant has sought RCRC assistance in getting a dating coach and participation in a health club.

6. Albert Kastl, Ph.D., is a psychologist in private practice. He is a consultant for RCRC. Dr. Kastl conducted an evaluation of claimant on July 26, 2000, with claimant as the informant. Dr. Kastl reviewed a May 27, 1997 report from Sylvia Young, Ph.D., Supervising Psychologist, Harbor Regional Center, interviewed claimant, and administered the Wechsler Adult Intelligence Scale – III, the Wide Range Achievement Test – III, and the Vineland Adaptive Behavior Scales. Results of the WAIS-III revealed a Verbal I.Q. of 79, a Performance I.Q. of 78, and a Full Scale I.Q. of 77. Average scores were noted on the WRAT-III Reading and Spelling portions with a standard score of 86 on the Arithmetic portion of the test. The Vineland Scales revealed an Adaptive Behavior Composite of 81. Dr. Kastl concluded:

Overall test scores fall in the borderline to average ranges, with the preponderance of scores falling in the low-average range. Certainly, there is no evidence here of functioning in the range of mental retardation. He would benefit from some career counseling as well as vocational rehabilitation services.

Pursuant to this evaluation RCRC determined claimant ineligible for regional center services.

7. Claimant's mother, Judy B., was unhappy about RCRC's denial of services to her son. She asked Dr. Kastl to reevaluate claimant. Dr. Kastl agreed and, on August 23, 2000, conducted a second evaluation. Dr. Kastl again administered the Vineland Adaptive

Behavior Scales, but with claimant's mother acting as the informant. Based on claimant's mother's responses, claimant's Adaptive Behavior Composite was 60, which was significantly lower than when claimant had been the informant, and "fall[ing] in the range of mild mental retardation." The Wechsler Memory Scale-Revised revealed a General Memory Index of 59. Dr. Kastl concluded:

A review of adaptive functioning conducted with mother indicates that there are, indeed, significant delays of adaptive functioning. Moreover, the delays are prominent on a measure of memory skill. Mother indicated that Brian has particular difficulty in recalling things in a home or work setting, and her impression is, indeed, confirmed by the results of the Wechsler Memory Scale—Revised. On this basis, I feel that [claimant] does qualify for services of the Redwood Coast Regional Center on the basis of the "Fifth Category." Though his intelligence test scores fall in the borderline range, the supplementary measures are reflective of his impaired functioning."

It is unclear why, given the strength of his conclusion a month earlier ("Certainly, there is no evidence here of functioning in the range of mental retardation."), Dr. Kastl reached an opposite conclusion after the second evaluation. Nevertheless, pursuant to this reevaluation, RCRC determined that claimant had a developmental disability (under the "fifth category") and that he was eligible for regional center services. Claimant thus again became an RCRC consumer.

8. Reports in claimant's chart show that RCRC was aware as early as 2000 that claimant had attended the California State University, Long Beach. It is not clear why RCRC did not reassess claimant's eligibility for regional center services until 2006, some six years later.

9. In July 2006, RCRC suggested that claimant be evaluated by an independent psychologist, Dr. Milton Harris. Claimant initially agreed to the independent evaluation but revoked his assent in September 2006.

10. RCRC staff, including Dr. Kastl, reassessed claimant's eligibility for regional center services in October 2006. In an October 17, 2006 report, Dr. Kastl discussed his conclusion that RCRC's August 23, 2000 determination that claimant was eligible for regional center services was "clearly erroneous." Very significant in Dr. Kastl's reevaluation was claimant's CSULB transcript, which RCRC had received on October 10, 2006. (As found above, RCRC had been aware of claimant's college education since 2000.) Dr. Kastl stated:

This transcript indicates that Brian [B.] did receive a Bachelor of Science degree on August 21, 1988 [sic (transcript indicates 1998)]. The degree G.P.A. was 2.513. The grades are, of

course, somewhat variable, but of particular significance is the grade of “A” in an astronautics and space class, a grade of “A” in international business, and grades of “B” in such classes as managerial economics and production control. Such achievements would not be consistent with Fifth Category eligibility.

Dr. Kastl also discussed notes in claimant’s file indicating: claimant’s concern with finding a girlfriend and request for “vendorization” of E-Harmony service; claimant’s interest in obtaining funding for a market analysis; and, claimant’s interest in obtaining start-up funds for his business and to hire a consultant to do initial research for claimant’s start-up plan. Dr. Kastl commented that claimant made independent judgments, had interests and planning skills, and demonstrated a quality of writing (grammatical structure, spelling, syntactical usage, etc.) “not consistent with Fifth Category eligibility.”

11. In the course of their reassessment of claimant’s eligibility, RCRC personnel did not review claimant’s complete chart. Dr. Kastl and Kathleen Kasmire (currently RCRC Interim Director, Consumer Services) acknowledged that they did not see, or did not recall, various documents in claimant’s RCRC chart.

12. At hearing, Dr. Kastl testified that at the August 2000 reevaluation he considered claimant’s mother to have been truthful. He has since concluded that claimant’s mother’s answers were not reliable. Claimant’s mother was not a witness at the hearing. It was not established whether claimant’s mother provided reliable or unreliable answers in 2000.

LEGAL CONCLUSIONS

1. Welfare and Institutions Code section 4643.5, subdivision (b), provides that once an individual has been found to have a developmental disability, he or she “shall remain eligible for services . . . unless a regional center, following a comprehensive reassessment, concludes that the original determination that the individual has a developmental disability is clearly erroneous.”

Claimant argues that RCRC did not conduct a comprehensive reassessment, asserting that numerous documents in claimant’s chart were not included in RCRC’s reassessment of claimant. Claimant notes that Kathleen Kasmire testified that she had “reviewed [claimant’s] entire chart” but then admitted under cross-examination that she did not recall seeing numerous documents in claimant’s chart (including exhibits 7, 11, 35, 54, 55, 56, and 58).

Claimant further notes that Dr. Kastl, when asked whether his review of documents was comprehensive, testified, “It was from the point of view of the psychological test results over the years. It was not comprehensive in the sense of my reviewing personally all of the documents we have available today.” On cross-examination, Dr. Kastl testified that he had not seen numerous documents in claimant’s chart (including exhibits 39, B, D, F, G, and I).

RCRC counters, “[N]owhere is it written that a comprehensive reassessment requires one to review every document that exists, particularly when at least some of those documents were not in RCRC’s possession at the time of the reassessment.” That may be so, but RCRC presented no explanation why some documents in its possession were included in the reassessment while others were not; the requirement for a comprehensive reassessment would appear to require a regional center to consider the entire chart.

The evidence at hearing, including the testimony of RCRC witnesses Kasmire and Kastl, demonstrated that RCRC did not conduct a comprehensive reassessment. Given the history of RCRC’s relationship with claimant – including the lost records of his receipt of services when a minor, the initial determination of ineligibility in 2000 being followed almost immediately by a determination of eligibility, and the six years that passed (despite knowledge of claimant’s college education) before a reassessment was made – RCRC would do well to conduct the comprehensive reassessment specified in the law.

Pursuant to Welfare and Institutions Code section 4643.5, subdivision (b), claimant shall remain eligible for RCRC services unless and until RCRC conducts a comprehensive reassessment and concludes that its original determination that claimant has a developmental disability is clearly erroneous.

2. This decision does not reach the question whether claimant has a developmental disability. It does not decide whether claimant shall receive any particular services from RCRC.

ORDER

Claimant’s appeal of RCRC’s determination of ineligibility for regional center services is granted. He remains eligible for regional center services.

DATED: _____

STEVEN C. OWYANG
Administrative Law Judge
Office of Administrative Hearings

NOTICE

This is the final administrative decision in this matter. Both parties are bound by this decision. Either party may appeal the decision to a court of competent jurisdiction within 90 days of receiving notice of the decision. (Welf. & Inst. Code, § 4712.5, subd. (a).)